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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,799	01/11/2001	Thomas R. Porter	P00639US3	1046

27140 7590 05/21/2003

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EXAMINER

SHARAREH, SHAHNAM J

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application N .	Applicant(s)
	09/758,799	PORTER, THOMAS R.
	Examiner	Art Unit
	Shahnam Sharareh	1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 February 2003.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 53-69 and 71-78 is/are pending in the application.
  - 4a) Of the above claim(s) 53-65 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 66-69 and 71-78 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

Amendment filed on February 24, 2003 has been entered. Claims 53-69, 71-78 are pending. Claims 53-65 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4. This application contains claims 53-65 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any rejection that is not addressed in this Office Action is considered obviated in view of the amendment and the attached Terminal Disclaimer.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejection under 35 U.S.C. 103(a)***

Claims 66-69, 71-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel in view of Feinstein US Patent 4,572,203 (Feinstein) and Cerny et al US Patent 4,957,656 (Cerny) and Schutt US Patent 5,605,673 (Schutt).

Applicant's arguments with respect to this rejection have been fully considered but are not found persuasive. Applicant argues that Siegel does not teach 5% solution of dextrose as carrier and further there is no suggestion in the art to combine references.

First, Examiner replies that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, the rejection is based on their combined teachings of the cited references which provides for all limitations of the instant claims.

Second, even though Siegel uses saline solution as a carrier of his Echogen, employing a Dextrose 5% solution (D5W) would have been well within the level of ordinary skill in the art, because such solutions are art equivalent substitutes and essentially provide a balanced electrolyte solution for intravenous administration of diagnostic or therapeutic compositions. Such interchangeability is well within the skill of an ordinary artisan.

Moreover, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, using D5W as a carrier and perfluorocarbon as a suitable gas would have been well within the general knowledge available to one of ordinary skill in the art. Accordingly, the rejection is proper.

Examiner draws Applicant attention to Remington: the science and practice of pharmacy, pages 915-916. Examiner submits this piece of prior art merely shows the

general knowledge available to one of ordinary skill in the art and is not used as a primary or secondary reference in the pending rejection. Accordingly, D5W and Saline are recognized, as art equivalents and absence of showing unexpected results using one over the other would not render the instant claims patentable over the cited prior art.

Moreover, as provided in previous Office Action, Schutt provides a reasonable degree of expectation of success for the ordinary artisan to use perfluorobutane or perfluoropropane and enhance coronary flow with thrombolytic agents (col 11, lines 28-33). Therefore, the combined teachings of the references not only meet all elements of the instant claims, but also provide reasonable expectation of success to satisfy an obviousness rejection. Finally, Applicant has not provided any evidence of unexpected results rebutting the rejection. Therefore, the claims stand rejected for the reasons of record.

### ***Conclusion***

No claims are allowed. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 703-308-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

ss  
May 18, 2003

201  
RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1203